

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

RANDALL McNEESE	§	
v.	§	CIVIL ACTION NO. 6:04cv174 (Crim. No. 6:03cr11)
UNITED STATES OF AMERICA	§	

MEMORANDUM ADOPTING REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE
AND ENTERING FINAL JUDGMENT

The Movant Randall McNeese, proceeding *pro se*, filed this motion to vacate or correct his sentence under 28 U.S.C. §2255. This Court ordered that the case be referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges.

McNeese was convicted of possession with intent to distribute of more than five grams of actual methamphetamine or more than 50 grams of a mixture or substance containing a detectable amount of methamphetamine. On January 20, 2004, he was sentenced to 200 months in prison, followed by five years of supervised release, and a special assessment of \$100.00.

In his Section 2255 motion, McNeese contended that the district court improperly relied on information in the pre-sentence report to support a sentence enhancement based on possession of a firearm, and that there was no evidence produced during the sentencing stage to establish possession of a firearm (which was used to enhance his sentence). The Government was ordered to answer the petition and did so. McNeese filed a motion for extension of time in which to respond, which was granted, but never filed a response to the answer.

After review of the pleadings and records in the case, the Magistrate Judge issued a Report recommending that McNeese's motion to vacate his sentence be denied. A copy of this Report was sent to McNeese at his last known address, return receipt requested, but no objections

have been received; accordingly, McNeese is barred from *de novo* review by the district judge of those findings, conclusions, and recommendations and, except upon grounds of plain error, from appellate review of the unobjected-to proposed factual findings and legal conclusions accepted and adopted by the district court. Douglass v. United Services Automobile Association, 79 F.3d 1415, 1430 (5th Cir. 1996) (*en banc*).

The Court has reviewed the pleadings in this cause and the Report of the Magistrate Judge. Upon such review, the Court has determined that the Magistrate Judge's Report is correct. It is accordingly

ORDERED that the Report of the Magistrate Judge is ADOPTED as the opinion of the District Court. It is further

ORDERED that the above-styled motion to vacate or correct sentence is hereby DISMISSED with prejudice. It is further

ORDERED that any and all motions which may be pending in this action are hereby DENIED.

SIGNED this 11st day of August, 2006.


MICHAEL H. SCHNEIDER
UNITED STATES DISTRICT JUDGE